IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1876 of 2001

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAZMABEGAM NAZIRBEG MIRZA & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR G RAMAKRISHNAN for Petitioner(s) : 1 - 2.
MS MINI NAIR, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/01/2007

ORAL JUDGMENT

1. The present Writ Petition has been filed under Article 226 of the Constitution of India with a

prayer to issue a Writ of Mandamus or an appropriate direction to the respondents to transfer the petitioners to Ahmedabad forthwith. Rule was issued in this petition on 23.4.2001. With the consent of the learned counsel for the parties, the petition is being finally heard today.

2. The petitioner No.1 is a Woman Police Constable and the petitioner No.2 is a Police Constable. Both the petitioners are stated to be husband and wife. Briefly stated, the facts giving rise to the instant petition, as culled out from the contents thereof, are that initially the petitioners were serving under the Police Department at Ahmedabad. It is alleged that they were wrongly transferred out of Ahmedabad District to Vadodara, due to which the domestic life of the petitioners has been disrupted, since the family consists of the mother-in-law of the petitioner No.1 and five minor children.

3. This Court has heard Mr.G.Ramakrishnan, learned

counsel for the petitioners and Ms.Mini Nair, learned Assistant Government Pleader for the respondents, and has gone through the averments made in the petition as well as the documents annexed thereto.

4. Mr.G.Ramakrishnan, learned counsel for the petitioners, has forcefully argued that the petitioners, who are husband and wife, were recruited and appointed at Ahmedabad and were serving at this place when they were transferred to Vadodara. They have made representations to the concerned authorities which have not met with any success and their representation for their transfer to Ahmedabad has been rejected vide order dated 10.5.2000 of the Additional Director General of Police (Adm.), Gujarat State, Gandhinagar, without assigning any cogent reasons for the said rejection. The learned counsel for the petitioners has submitted that one of the reasons for rejecting the representation of the petitioners for their transfer to Ahmedabad is that cadres of the

Police Constabulary at Vadodara and Ahmedabad are different and their transfer to Ahmedabad will create administrative difficulties. He has further contended that if the petitioners could be transferred from Ahmedabad to Vadodara in the first place, there is no reason why they cannot be transferred back to Ahmedabad at their request looking to their domestic difficulties. Moreover, according to him, the petitioner No.1 has attained the age of 51 years and is due to retire at 55 years or definitely at the age of 58 years, depending on her medical fitness. Therefore, a choice of posting should be accorded to the petitioners on this ground as well. Further, it has been submitted that as per Chapter-IV of the Police Manual, an extract of which has been annexed as Annexure-A to the petition, a sympathetic consideration should be given while ordering transfers of constables and genuine domestic difficulties should be considered. Since the family of the petitioners is facing difficulties, their request deserves to be acceded to on this ground as well. Lastly,

it has been contended that since the respondents have failed to file any reply and since the petitioners have been constrained to move this Court for the third time by way of this Writ Petition, an adverse inference ought to be drawn against the respondents and the averments made in the Writ Petition should be accepted.

5. This Court has carefully considered the submissions made by the learned counsel for the petitioner. A perusal of the order dated 10.5.2000 passed by the Additional Director General of Police (Adm.), Gujarat State, Gandhinagar, makes it very clear that earlier, the petitioners had filed Special Civil Application No.6776 of 1993 which was disposed of by this Court (Coram: K.G.Shah, J.) vide order dated 14.9.1993, to be found at page-20 of the paper-book. By this order, the Court had directed the petitioners to make a representation to the concerned authorities and it was further ordered that ad-interim relief granted earlier shall continue to remain in

force till October 18, 1993, after which it would automatically come to an end. It appears that the petitioners made a representation and consequent thereto, both the petitioners herein were transferred to Vadodara. This fact is evident from a reading of the order dated 10.5.2000 annexed as Annexure-E to the petition. Thereafter, the petitioners filed Special Civil Application No.2379 of 2000 which was decided by this Court (Coram: Ravi R.Tripathi, J.) vide order dated 3.4.2000. Mr.G.Ramakrishnan, learned counsel for the petitioner, has produced a photocopy of this order which is taken on the record of the case. A perusal of the same reveals that the petitioners had moved the Court since the representation filed by them had not been considered. This Court directed the respondent No.2 therein to decide the said representation by 8.5.2000 and communicate the decision to the petitioner by Registered A.D. No other directions were given. A mention of this representation is also found in order dated 10.5.2000 of the Additional Director General of

Police (Adm.), Gujarat State, Gandhinagar, which has been passed in consideration of the same representation. It is relevant to note at this stage that while the petitioners have prayed for the relief of issuance of a Writ of Mandamus directing the respondents to transfer them to Ahmedabad, there is no prayer to quash or set aside the order dated 10.5.2000 by which the representation of the petitioners has been rejected. In fact, no order of transfer has been impugned in this petition but only a direction is sought to the respondents to transfer them to Ahmedabad.

6. The law regarding interference of the Court in matters of transfer is no longer res-integra. The petitioners are both Police Constables and members of a disciplined and armed force. Although it may be true that the transfer of an employee sometimes causes difficulties and dislocation of the domestic setup of the concerned employee, however, merely on that ground, the order of transfer is not liable to

be struck down. It is a settled position of law by a catena of judgments that unless an order of transfer is passed mala fide or in violation of the Rules of service or guidelines for transfer or without any reasonable justification or in a colourable exercise of power, the Courts or Tribunals should not interfere with such an order of transfer. Transfer is an incidence of service and it is not for the Courts or Tribunals to direct the concerned executive authorities to transfer a particular person to a particular place or to restrain them from doing so.

7. In matters regarding transfer of members of the armed forces, the Supreme Court, in ***Major General J.K.Bansal v. Union of India and others – (2005) 7 SCC 227***, has observed as under:

> *"The decisions referred to herein to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer, were rendered in the case of civilian employees or those who are working in*

> *public sector undertakings.* ***The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made****.” (emphasis supplied)*

The same principle will apply to a member of a disciplined and armed force such as the Police force, which is entrusted with the duty and responsibility of maintaining law and order in society.

8. In ***Major General J.K.Bansal v. Union of India and others*** (supra) the challenge made by the appellant therein to his order of transfer was on the ground of mala fide. However, in the case in hand, no ground is made out regarding mala fide nor any whisper to this effect is to be found in the body of the petition. It is evident

from the record that the petitioners have complied with the transfer order dated 16.10.1993, by which they have been transferred to Vadodara and since then, about thirteen years have elapsed. The representation made by the petitioners to transfer them from Vadodara to Ahmedabad has already been rejected by an order dated 10.5.2000, i.e. about six and half years ago. The only direction being sought by the petitioners in the present petition is that the respondents should be directed to transfer them from Vadodara to Ahmedabad, which, in the opinion of this Court, is not sustainable in law.

9. If the petitioners are facing domestic difficulties, their children and aged parents or in-laws, as the case may be, can easily live with them at Vadodara, if they are not already doing so. There are good educational institutions and medical facilities available at Vadodara, which is one of the developed cities of Gujarat and quite close to Ahmedabad as well.

The plea of domestic difficulties being faced by the petitioners is not at all convincing to this Court and is, therefore, not deserving of acceptance.

10. The administrative exigencies and prevailing service conditions have to be considered and looked into by the concerned authorities, who are the best persons to do so. The reasons for rejection of the representation of the petitioners contained in order dated 10.5.2000 are cogent ones, and no illegality has been committed by the respondents in doing so.

11. By not filing any reply, no adverse inference is liable to be drawn against the respondents, since the orders of this Court in Special Civil Application No.6776 of 1993 and Special Civil Application No.2379 of 2000 dated 14.9.1993 and 3.4.2000 respectively, together with order dated 10.5.2000 of the Additional Director General of Police (Adm.), Gujarat, State, Gandhinagar, are sufficient to be taken into consideration in

order to give a clear picture of the events prior to the filing of this petition.

12. The scope of judicial review of the order of transfer of an employee is limited and unless there is an infraction of Rules or the said transfer is shown to be an outcome of a mala fide or colourable exercise of power, the Courts would not interfere as a matter of routine. In this regard, the observations made by the Hon'ble Supreme Court in ***National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and another – (2001)8 SCC 574*** are pertinent and are therefore reproduced below:

> *"....No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of*

power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned....”

13. As observed earlier, no transfer order has been challenged in this petition and a prayer is made to issue directions to the respondents to transfer the petitioners to Ahmedabad forthwith. The prayer made by the petitioners in the Writ Petition is not liable to be granted since it is not for the Court to direct an executive authority, by issuing a Writ of Mandamus in proceedings under Article 226 of the Constitution, to transfer a particular employee to a particular place. If such a direction is given, it would amount to interference in matters which are within the realm of the executive alone. Who should be transferred where, is for the concerned administrative

Department to decide, looking to the administrative exigency and public interest. The representations of the petitioners have been duly considered. The petitioners were transferred to Vadodara in consideration of their representation, as directed by the order of this Court dated 14.9.1993 passed in Special Civil Application No.6776 of 1993. The rejection of their representation to be transferred to Ahmedabad vide order dated 10.5.2000 is neither illegal nor arbitrary, and does not disclose any mala fide or colourable exercise of power. Any personal inconvenience or difficulty faced by an employee cannot override the administrative exigency or public interest at large. The scope of interference in matters of transfer relating to disciplined and armed forces is even narrower. The petition does not disclose any cause of action which may persuade this Court to exercise jurisdiction under Article 226 of the Constitution.

14.As no convincing grounds have been made out by

the petitioners to warrant the interference of this Court, the Writ Petition is devoid of any merit and deserves to be rejected.

15. For the foregoing reasons, the Writ Petition is dismissed. Rule is discharged. There shall be no orders as to costs.

(Smt.Abhilasha Kumari, J.)

(sunil)